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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HYLTON, ROBIN A.

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 11/19/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,784

Applicant(s)

GERMAIN ET AL.

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-8, 10-28, 42-49, 51 and 53-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-8, 10-28, 42-49, 51 and 53-55 is/are rejected.
- 7) ☒ Claim(s) 56 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

1. Upon reconsideration of the art of record and newly discovered references to Rohr et al. (US 5,271,531), the indicated allowability of the claims is withdrawn. Rejections based on the newly cited reference and the art of record follow.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 4,5,7,8,42-44, 46-49,51,53, and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Wright (US 4,717,050).

First flap/closure **14** and second flap/closure **16** are considered to be part of the panel of closure portion **12**. Figure 4 illustrates the second flap/closure latching the first flap in an open position. Regarding claim 49, it is known in the art to supply indicia to a closure.

Claim Rejections - 35 USC § 103

4. Claims 10-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sequeria (US 3,226,001) in view of Braude (US 4,741,450) or Turner (US 4,949,865).

The narrow portion of the opening of Sequeria is considered resilient members for engaging a straw. Regarding claims 14 and 20, to the degree set forth in the claims, the first flap **7** is configured, i.e., capable of, to rotate in the same direction as the second flap **3**. Sequeria is silent regarding latching the second flap in an open position.

Braude and Turner both teach known mechanisms for latching a lid flap in an open position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a mechanism for holding the second flap of Sequeria in an open position as taught by either Braude or Turner. Doing so allows one to drink from an associated container via the lid without the need to hold the flap open with a finger.

Regarding claim 22, it is known in the art to supply indicia to a closure.

5. Claims 6 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright in view of Rohr et al. (US 5,271,531).

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Wright teaches the claimed lid except for resilient members configured to receive a straw.

Rohr teaches it is known to provide a dispensing opening with a plurality of resilient members configured to engage a straw.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a plurality of resilient members to the dispensing opening of the first flap and to substitute the second flap member protruding member with a short one as taught by Rohr to the lid of Wright. Doing so allows for not only the resilient members to receive and maintain a straw therein, but to also control the flow of liquid dispensed through therethrough.

6. Claims 12-22 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright in view of Rohr.

Wright teaches the claimed lid except for resilient members configured to receive a straw.

Rohr teaches it is known to provide a dispensing opening with a plurality of resilient members configured to engage a straw.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a plurality of resilient members to the dispensing opening of the first flap and to substitute the second flap member protruding member with a short one as taught by Rohr to the lid of Wright. Doing so allows for not only the resilient members to receive and maintain a straw therein, but to also control the flow of liquid dispensed through therethrough.

Regarding claim 22, it is known in the art to supply indicia to a closure.

Allowable Subject Matter

7. Claim 56 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Baudin et al. (US 6,089,411) is cited for having structure similar to that claimed.

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9. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

10. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below.

Typed or printed name of person signing this certificate

Signature _____

Date _____


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
November 16, 2003


Robin A. Hylton
Primary Examiner
GAU 3727